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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,670	01/29/2004	L. Keith Rogerson	RLK-32	5415

22827 7590 09/08/2004

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EXAMINER

SWINEHART, EDWIN L

ART UNIT PAPER NUMBER

3617

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/767,670

Applicant(s)

ROGERSON, L. KEITH

Examiner

Ed Swinehart

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NW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15-24, 27-31 and 33-37 is/are rejected.
- 7) ☒ Claim(s) 13, 14, 25, 26 and 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the box and pyramid shaped pockets, the chain, the d-ring, o-ring, clasp, and hook and eye must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims 3-6,9,10,16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The metes and bounds of claims 3,4,6,9,10 and 16 cannot be determined, due to the indefinite and highly alternative nature of the claim language.

Claim 16 further has features lacking antecedent basis in the claims.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4,6-9,11 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Beach, Jr.

Beach, Jr. discloses a mooring buoy having a pocket **11** defined therein, with a fastening device **18** positioned therein, such that it does not project outwardly beyond the buoy surface. Inherently buoyant material is contained therein.

Re claim 2, a tube is provided as claimed. Re “for”, such is a statement of intended use, carrying little to no weight in the claim.

Re claim 15, “ballast” fails to define over the anchor **22**.

6. Claims 1,3,6,8-12,18-21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Puchois.

Puchois discloses a plastic shell (Fig. 3) provided with a pocket for receiving a shackle as claimed. A buoyant material **17** is retained therein.

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Re claim 9, a box may be round.

Re claim 12, the portion of the shell above openings **15** defines a lip as claimed.

Re claim 23, an integral member is inherently "affixed".

7. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Casey.

Casey discloses a buoy having an outer shell with a pocket therein to support a D-ring/shackle, such that it does not project outwardly beyond the outer surface.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beach, Jr. in view of Kirkpatrick et al.

Beach, Jr. fails to disclose construction of polyethylene, as is considered to have been old and well known in the art as evidenced by Kirkpatrick et al.

It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the buoy of Beach, Jr. from polyethylene as taught by Kirkpatrick et al.

Such a combination would have been desirable at the time the invention was made so as to provide for ease in construction and durability.

10. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Puchois in view of Duren.

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Puchois discloses plastic construction, but not if the type claimed.

Duren teaches buoy construction from polyethylene

It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the shell of Puchois from polyethylene as taught by Duren.

Such a combination would have been desirable at the time the invention was made so as to provide use of recyclable materials.

11. Claims 27,29,30,33 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beach, Jr.

Beach Jr. is discussed above. Beach fails to disclose the manner in which the tube is attached to the shell, although either gluing or vulcanizing (as in his other embodiment) would have been well within the level of skill of the ordinary routineer working in the art at the time of the invention. Both such techniques are a bonding step.

12. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beach, Jr. as applied to claim 27 above, and further in view of Wolfe.

Beach fails to discuss molding of his shell.

Wolfe teaches the equivalency of an inflatable buoy, to one injection molded with polyethylene.

It would have been obvious to one of ordinary skill in the art at the time of the invention to injection mold the shell of Beach as taught by Wolfe.

Such a combination would have been desirable at the time the invention was made so as to provide for ease of production.

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13. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beach, Jr. as applied to claim 30 above, and further in view of Tihany.

Beach fails to disclose the step of hardening a buoyant material.

Tihany teaches the equivalency of air inflation, to the injection of polymer foams.

It would have been obvious to one of ordinary skill in the art at the time of the invention to inject polymer foam into the shell of Beach for buoyancy as taught by Tihany.

Such a combination would have been desirable at the time the invention was made so as to provide for enhanced buoyancy.

14. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beach, Jr. as applied to claim 27 above, and further in view of Duren.

Beach fails to disclose ballast within the shell.

Duren provides ballast.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide ballast to the buoy of Beach as taught by Duren.

Such a combination would have been desirable at the time the invention was made so as to provide ease of use, as the orientation of the buoy will be more stable.

15. Claims 13,14,25,26 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Swinehart whose telephone number is 703-308-

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2566. The examiner can normally be reached on Monday through Thursday 6:30 am to 2:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to be 'Ed Swinehart', written over a circular stamp.

Ed Swinehart  
Primary Examiner  
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